

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C. ASH, Minor.

UNPUBLISHED

May 20, 2014

No. 317888

Genesee Circuit Court

Juvenile Division

LC No. 12-129022-NA

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Before: GLEICHER, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, respondents¹ appeal as of right a trial court order terminating their parental rights to the minor child CA pursuant to MCL 712A.19b(3)(b)(i)(ii), (g), (j) and (k) and finding that the termination was in the child's best interests pursuant to MCL 712A.19b(5). For the reasons set forth in this opinion, we affirm.

I. FACTUAL BACKGROUND

On July 8, 2012, Officer Matt Azelton was dispatched to respondents' residence in response to a 911 call wherein respondent-father Kristopher Ash (Kris) reported that his four-month-old son CA had stopped breathing. Respondent-mother Megan Ash had left CA in Kris' care while she took a nap. Kris reported to Azelton that CA simply stopped breathing after he "patted" the baby's buttocks in an effort to make him stop fussing. Later, at the hospital, Kris admitted that he might have "patted" the baby "too hard."

¹ Respondent mother filed her claim of appeal in Docket No. 317888, and respondent father filed his claim of appeal in Docket No. 317889. The appeals were consolidated. *In re C Ash Minor*, unpublished order of the Court of Appeals, entered September 3, 2013 (Docket Nos. 317888-317889).

CA was rushed to Hurley Medical Center where Dr. Mahefsh Sharman administered emergency care. Upon arrival, CA was unresponsive and in a deep comatose state; he was unable to breathe on his own. CA's skull was fractured and he had fractures on two sides of his occipital bone. There was fluid build-up under his skull and around his brain causing a bulge on the top of his head. CA's collarbone and left clavicle were fractured; both fractures appearing to have occurred at different times. CA had bruises of various ages on his buttocks and back of his thighs. CA also had hemorrhages in the retinas in both of his eyes, blinding him and necessitating corrective surgery at a later date. An MRI showed subdural bleeding of the brain. The blood collected over different times, indicating that there was more than one bleed. Dr. Sharman explained that CA suffered a severe traumatic brain injury and indicated that the baby suffered "multiple" instances of trauma. Upon arrival at the hospital, CA had no brain function and, according to Dr. Sharman, his injuries were "close to lethal."

CA was admitted at Hurley on July 8, 2012, and he was not discharged until July 26, 2012. He was on a ventilator for over a week and doctors had to tap into his skull to remove excess fluid build-up around the brain. CA's injuries left him with a diagnosis of cerebral palsy and caused a high risk for cognitive and developmental consequences and upon discharge, CA required "extensive" follow-up treatment. Dr. Sharman testified that, in his opinion, CA was abused; the baby suffered physically-inflicted injuries that were "very likely to be happening multiple times." CA's skull fracture was caused by contact with an object. CA also suffered bruises on his buttocks and thighs that were of various stages of healing.

Dr. David Dotson testified that he was the Ash's family physician. He performed CA's two-month physical in April 2012. Dr. Dotson did not notice any abnormalities and he scheduled CA for a four-month checkup. In June 2012, Kris and Megan canceled CA's four-month appointment, indicating that they had switched to a pediatrician; however, Dr. Dotson never received a request for CA's medical records from a pediatrician. After learning about CA's medical emergency, Dr. Dotson questioned both Kris and Megan about the incident. Kris explained that a friend put CA in a baby swing and CA bumped his head on a wall. Megan stated that she suffered a seizure and fell while holding CA. Dr. Sharman testified that CA's injuries were not caused by a fall.

Petitioner, Department of Human Services (DHS) filed a petition to terminate respondents' parental rights and CA was placed in foster care during the pendency of the proceedings.

Initially, Megan made statements to a Child Protective Services (CPS) worker and to a police detective that Kris was abusive and that she saw Kris shake, hit and spank CA when he was angry. Megan stated that when she tried to intervene, Kris hit, slapped or threw things at her. In addition, Megan previously applied for a personal protection order (PPO) against Kris wherein she stated that Kris physically abused and spanked her child and she stated that she was afraid of Kris. At trial, Megan disavowed the PPO and claimed that she was paranoid at the time. She denied that she ever saw Kris spank or abuse CA and she stated that she did not believe that Kris caused CA's injuries. Instead, she claimed that a roommate who lived with respondents and was present in the home on July 8, 2012, caused CA's injuries.

Kimberly Puerta, a Child Protective Services (CPS) investigator, interviewed both parents. Puerta testified that it was in CA's best interests to terminate respondents' parental rights. Megan was unable to protect CA. She was overly defensive of Kris and she refused to admit that something happened to the child. Megan was not open to any other story other than her own and she refused to consider the possibility that something happened. With respect to Kris, Puerta explained that Kris admitted he had an emotional impairment and had trouble dealing with stressful situations. Neither parent appreciated the extent of CA's injuries. Furthermore, the situation could not be rectified because the parents could not explain how CA's injuries occurred and they refused to see that something happened. Instead, they simply stated that CA quit breathing. In addition, both individuals had their own mental health issues to deal with and they were not prepared to deal with CA's new disabilities.

At trial, Jacob Walker, a former neighbor who frequented respondents' home testified that, on one occasion when CA started crying, Kris went into the baby's bedroom and closed the door. Walker testified that Megan told him that Kris was "whipping his butt," and that is why Kris closed the door. On another occasion, Walker saw Kris holding CA over his arm "beating" the baby's buttocks; the baby stopped crying when Kris "whipped" him. Walker never saw the roommate harm CA.

Crystal Thompson testified that she previously lived in the same apartment complex with respondents. Thompson testified that both respondents stated that Kris would spank CA at a very young age if he cried and Kris admitted that he spanked CA when he cried. Thompson also observed Kris spank CA. On one occasion when a friend's child was fussy, Kris told the friend to keep the child quiet and bragged that he "knew how to make a child stop crying."

Carlos Amos testified that Megan left Kris and stayed with him for a short time after CA went to the hospital. Amos explained that he heard Kris talking to Megan on speaker phone stating that he was sorry for "hurting our son."

Megan denied that Kris was abusive and denied that Kris ever hurt CA. Megan denied telling Walker that Kris "whipped" CA, denied that Amos heard Kris' phone conversation, denied admitting to police that Kris was abusive, denied previously stating that Kris spanked CA, denied hearing Kris say that he "knew how to make a baby stop crying," and denied that CA had bruises before July 8, 2012. To the extent she did say that Kris was rough with CA, it was only because of what other people were saying. Megan did not know what happened to CA and she did not know what Kris or the roommate did immediately before the emergency while she was napping, but she thought that the roommate hurt CA. Megan thought that some of CA's injuries could have been caused by accidents while others must have been caused by abuse. Megan testified that CA spent time with relatives and baby sitters during the days before the emergency.

Respondents called friends to testify that they were good parents. Respondents also called three witnesses who worked at the Ennis Center who had occasion to supervise their parenting time with CA. The witnesses testified that the parenting visits went well and that Megan and Kris acted appropriately during the visits. Respondents introduced evidence showing that they participated in parenting and anger-management classes.

During the pendency of the proceedings, Shannon McLaurine and her husband provided a foster home for CA. McLaurine testified that CA was blind when he came home from the hospital. CA needed two surgeries for his eyes and he needed special eye drops administered four times per day. CA needed blood-thinner shots and required a special formula and continued physical therapy. At the time of trial, CA was about three months behind normal development and he could not sit up by himself. A specialist from a children's agency visited the home on a regular basis to help with CA's development. Traci Bobrowski, CA's foster care case manager, testified that CA was thriving in the McLaurine home. The McLaurines provided a loving and caring environment and all of CA's medical needs were being met.

The court found that CA suffered severe physical abuse over a prolonged period of time when he was in the care, custody, and control of respondents and CA was exclusively with Kris during the time leading up to the emergency. The court found that the evidence showed that Kris physically abused CA and Megan failed to protect the child and then attempted to shift the blame to the roommate. The court found that remediation was not possible where respondents continued to deny that a problem existed and had "lied to police, social workers, medical personnel, psychological evaluators, friends, family, and anyone who will listen."

The court found grounds to terminate respondents' parental rights under MCL 712A.19b(3)(b)(i & ii) (parent's act/omission caused physical injury or harm to child, and there is a reasonable likelihood of future abuse), (g) (failure to provide proper care or custody for the child with no reasonable expectation parent will provide care within reasonable amount of time), (j) (reasonable likelihood child will be harmed if returned to parents), and (k) (parent abused child). The court also found that it was in the child's best interests to terminate the parental rights of both respondents pursuant to MCL 712A.19b(5). These appeals ensued.

II. ANALYSIS

On appeal Megan argues that the trial court erred in terminating her parental rights because petitioner failed to provide reunification services. This argument fails.

"Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). "Petitioner, however, is not required to provide reunification services when termination of parental rights is the agency's goal." *Id.* Here, petitioner sought termination from the outset; accordingly, it was not required to provide any reunification services. *Id.* at 463.

Next, respondents argue that the trial court clearly erred in finding statutory grounds to terminate their parental rights.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 462.

The trial court found statutory grounds for termination under MCL 712A.19b(3)(b)(i)(ii), (g), (j) and (k). With respect to Kris, there was clear and convincing evidence to support termination under MCL 712A.19b(3)(k), which provides grounds for termination where there is clear and convincing evidence that:

(k) The parent abused the child . . . and the abuse included 1 or more of the following:

* * *

(iii) Battering, torture, or other severe physical abuse.

(iv) Loss or serious impairment of an organ or limb.

(v) Life-threatening injury. []

Here, clear and convincing evidence supported that Kris inflicted severe physical abuse upon CA, caused loss or serious impairment of an organ or limb, and caused life-threatening injuries to CA. Specifically, while in Kris' care, CA suffered a fractured skull, he had fractures on two sides of his occipital bone; CA's collarbone and left clavicle were fractured, he had bruises of various ages on his buttocks and the back of his thighs. He suffered subdural bleeding. Some of CA's injuries were of various ages, supporting Dr. Sharman's opinion that CA suffered multiple instances of physical abuse. CA's injuries rendered him blind, caused cognitive and physical delays, and led to a diagnosis of cerebral palsy. He was in a deep comatose state and could not breathe on his own. There was fluid build-up under his skull. CA's injuries required three weeks of intensive hospital care and extensive follow-up medical treatment upon his release and Dr. Sharman described the injuries as "near fatal." Dr. Sharman explained that the injuries were a result of physical abuse including shaking.

Despite Megan's assertions at trial that Kris never harmed CA, the overwhelming evidence proved the contrary. Evidence supported that Kris shook CA and beat him in an effort to make the child stop crying. CA was in Kris' care immediately before he suffered injuries, some of which were caused by shaking. Megan previously stated that she saw Kris shake CA. Walker observed Kris "whip" and "beat" the child when he cried, and Megan told Walker that Kris "whipped" CA. Thompson testified that both Kris and Megan stated that Kris spanked the four-month-old baby and she observed Kris spank CA. Testimony showed that Kris boasted that he "knew how to make a child be quite." In addition, Megan initially admitted that Kris hit and spanked CA too hard and shook the baby. Although she later denied her admissions, the trial court could have readily found that she lacked credibility based on the overwhelming evidence of prolonged abuse and based on Megan's renewed relationship with Kris and her desire to protect him. See MCR 2.613(C) (we are to give due regard to the trial court's special opportunity to "judge the credibility of the witnesses who appeared before it.") Additionally, respondents abruptly canceled CA's doctor's appointment in June 2012, without any plausible explanation. This would have allowed the trial court to infer that respondents were aware CA had bruises a month before the medical emergency and did not want CA's physician to observe the bruises. Finally, Kris admitted that he suffered from an emotional impairment that affected his ability to

handle stressful situations. The court could have found that CA's fussing was a stressful situation that triggered Kris' violent response.

In sum, having reviewed the record, we are not left with a definite and firm conviction that a mistake was made when the trial court found that Kris physically abused CA and terminated his parental rights under MCL 712A.19b(3)(k). *In re HRC*, 286 Mich App at 462. Because we have concluded that at least one ground for termination of Kris' rights existed, we will not review the additional grounds upon which the trial court relied on. *Id.* at 461.

Similarly, there was clear and convincing evidence to support termination of Megan's parental rights under MCL 712A.19b(3)(b)(ii), (g) and (j) which, in pertinent part, provide for termination where:

(b) The child . . . has suffered physical injury or physical . . . abuse under 1 or more of the following circumstances:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical . . . abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In this case, as noted above, there was overwhelming evidence that CA was physically abused by Kris. In addition, there was clear and convincing evidence that Megan knew about the abuse, had the opportunity to stop the abuse, and failed to do so. MCL 712A.19b(3)(b)(ii). Here, medical testimony showed that CA had multiple bruises and fractured bones that showed he suffered multiple instances of physical abuse. The abuse was ongoing and the injuries were of various ages. Testimony allowed the trial court to conclude that Megan knew that Kris abused CA. Walker testified that Megan told him that Kris was "whipping [CA's] butt." Thompson testified that both Megan and Kris stated that Kris would spank CA at an early age. Moreover, at one point when she was separated from Kris, Megan admitted to authorities that Kris spanked, hit, and shook CA. Although Megan retracted those assertions after she reinitiated her relationship with Kris, the trial court could have found that Megan testimony was not credible. See MCR 2.613(C). Other evidence showed that respondents canceled CA's physical

examination in June 2012, without a viable explanation, which would have allowed the trial court to infer that respondents were aware of CA's bruises and wanted to conceal them from CA's physician. This evidence would have allowed the trial court to conclude that Megan was aware that CA was being abused and that Megan failed to intervene and failed to protect CA.

The evidence also showed that there was a reasonable likelihood that CA would be harmed if he was returned to Megan's home, and that there was no reasonable expectation that Megan would be able to provide proper care and custody within a reasonable time considering CA's age. MCL 712.19b(3)(g), (j). At the outset of the proceedings, Megan left Kris and admitted to authorities that Kris was violent and physically spanked and shook CA. However, shortly thereafter, Megan reunited with Kris and denied her prior admissions and refused to admit the possibility that Kris harmed CA despite the overwhelming evidence to the contrary. Megan denied that there was a problem in the home and she was not likely to benefit from services because of her refusal to admit there was a problem.

In addition, Megan failed to appreciate the extent of CA's injuries. Testimony showed that Megan attempted to explain-away CA's injuries as the result of accidents or as a result of his cesarean birth, despite the expert medical testimony to the contrary. Further, Megan could not offer a reasonable explanation for the baby's injuries and she maintained that there was no problem leaving CA in Kris' care even though CA nearly died in Kris' care. Instead, the court could have concluded that Megan attempted to shift the blame to a roommate and that Megan's theory lacked credibility. Furthermore, Megan admitted that she had serious mental health issues and she did not show the capacity to address them while caring for and protecting CA.

Moreover, case workers and experts testified that CA should not be returned to Megan's care. Puerta testified that Megan could not adequately protect CA and instead was overly defensive of Kris. Puerta explained that Megan refused to accept any explanation other than her own, failed to appreciate the extent of CA's injuries, and would not consider the possibility that something happened to CA. Aimee Kone, a clinical therapist, advised that CA should not be returned to Megan's care, she was also a victim of Kris' abuse, yet returned to the relationship. Similarly, Dr. Maxwell Taylor, a psychologist, testified that both parents needed 24-hour supervision when they cared for CA and neither parent was fit to care for CA alone. Dr. Taylor explained that Megan was overwhelmed with issues of her own self-survival and even with services Dr. Taylor was "guarded" in whether either parent could care for CA alone. Finally, Bobrowski testified that she did not think that Megan could provide an environment similar to the foster home and she advised that termination was in CA's best interests.

In sum, having reviewed the record, we are not left with a definite and firm conviction that a mistake was made when the trial court terminated Megan's parental rights to CA pursuant to MCL 712A.19b(3)(b)(ii), (g) and (j). *In re HRC*, 286 Mich App at 463. Because we have found grounds to terminate under at least one statutory provision, we decline to address the other statutory provisions relied on by the trial court. *Id.* at 461.

Next, respondents argue that the trial court clearly erred in finding that it was in CA's best interests to terminate their parental rights. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012);

MCL 712A.19b(5). We review a trial court's finding that termination is in the minor child's best interests for clear error. *In re HRC*, 286 Mich App at 459. When reviewing best interests, it is appropriate to consider evidence that a child was not safe with the parents and that the child was thriving in foster care. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

In finding that termination was in CA's best interests, the trial court acknowledged the strong bond between CA and respondents, but found that there was "a very high risk of further injury to a medically fragile child" and found that the risk was "so high that it is the greater concern." The court noted that CA had special needs that made it very difficult to care for the child and was likely to cause increased stress. The record indicates that the trial court did not clearly err in reaching this conclusion.

CA had medical needs that necessitated extra effort and attention. McLauren was able to meet all of CA's medical needs and she provided a loving and caring environment for CA. Bobrowski testified that CA was "thriving" in the McLauren home and she doubted that respondents could provide the same environment. Respondents suffered from their own mental health issues and Kris had an emotional impairment that affected his ability to handle stressful situations; Dr. Taylor testified that both respondents were overwhelmed with their own self-survival. CA's lingering medical issues would have caused increased stress and the record supports that respondents were not able to effectively deal with the added stress. It was reasonable for the court to conclude that CA's special needs would possibly have triggered additional physical abuse. Moreover, there were risks that CA would suffer further abuse with respondents because neither parent recognized the past abuse and refused to admit that there was a problem. They did not appreciate the extent of CA's injuries and they were unwilling to accept responsibility for their prior actions. On this record we are not left with a definite and firm conviction that a mistake was made when the trial court concluded that termination was in CA's best interests. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto